

United States Senate

WASHINGTON, DC 20510-0609

The Honorable Alejandro N. Mayorkas
Secretary of Homeland Security
2707 Martin Luther King Jr. Ave SE
Washington, D.C. 20529

July 13, 2023

Dear Secretary Mayorkas:

On April 18, 2023, in sworn testimony before the U.S Senate Committee on Homeland Security and Government Accountability, you insisted that, “[i]f somebody errantly sends me an email on my personal email that should have been sent to my work email, I forward it to my work email. That’s what I do. I fulfill my responsibilities scrupulously and I have 100% confidence in the integrity of my actions.”¹

A Freedom of Information Act lawsuit brought by Americans for Prosperity Foundation has uncovered hundreds of pages of records reflecting your use of a personal email account and cell phone for official DHS business since you assumed the Office of Secretary.² Equally alarming is DHS’s extensive redaction of those records that passed through your personal account; DHS withheld 56 pages in full and redacted over 200 others because they were ostensibly too sensitive to release.

As you are no doubt aware, DHS policy on the use of non-DHS email directs that “employees may not use non-DHS e-mail accounts to create or send e-mail records that constitute DHS records” unless there is an “emergency.” Yet DHS’s recent FOIA production suggests that officials—including Special Advisor Ricki Seidman—intentionally communicated with you through your private account, including in instances where there were no obvious exigent circumstances justifying deviation from required agency practice.³ This suggests that DHS higher-level management tolerates a culture of careless communication, which skirts the spirit, if not the letter, of federal records management laws.

Agency rules also require DHS records to be “removed from the non-[DHS] email account once [an] employee has ensured the capture of e-mail information” in an official records-keeping system, but there is not yet any public indication that you have complied with this requirement.

The sheer volume of communications on your private email and cell phone—especially communications with other DHS officials, federal legislators, and non-governmental interest groups and stakeholders—

¹ <https://www.youtube.com/watch?v=FWbtXKjt814&t=4652s>

² <https://americansforprosperity.org/afpf-obtains-over-400-pages-of-secretary-mayorkas-using-personal-email-for-government-business/>

³ See e.g., <https://americansforprosperity.org/wp-content/uploads/2023/04/2023-HQLI-00021-First-Release-Records.pdf#page=253> and <https://americansforprosperity.org/wp-content/uploads/2023/04/2023-HQLI-00021-First-Release-Records.pdf#page=271>

The Honorable Alejandro Mayorkas
July 13, 2023

raises serious concerns about whether *all* official messages sent to or from these devices were properly forwarded back to your official DHS accounts. The volume of messages also calls into question your insistence—during sworn testimony before a Senate committee—that anything you have ever received in your personal email address was sent “errantly.”

For these reasons, we request written answers to the following questions by July 27, 2023:

1. Are there any DHS records in your personal email account(s), personal cell phone(s), or any other personal messaging programs that have not been forwarded to your official DHS account(s)?
2. In those instances when you have used a personal email account or electronic device for official agency business, have you ever failed to comply with agency rules requiring DHS records to be “removed from the non-[DHS] email account once [you] ha[ve] ensured the capture of [the] e-mail information” in an official records system?
3. Aside from email and text messaging, do you use any other form of personal electronic communication, such as encrypted message applications, that may have “errantly” received or transmitted communications relating to official DHS business?
 - a. If so, have all of those records been forwarded to an official account and removed from the non-DHS account/device?
4. Have you encountered other DHS officials using their personal email for official DHS business?
 - a. If so, what have you done to ensure they are complying with DHS policy?
5. With respect to DHS officials that have contacted you through your personal account(s) or device(s), were all such instances justified by exigent, emergency circumstances?
 - a. If not, why did DHS employees contact you through your personal account(s) or device(s)?
6. Why do DHS employees have your personal contact information, and how widespread do you believe the distribution of your contact information to be among DHS personnel?
7. What steps have you taken to ensure a culture of careful communications and strict compliance with all federal laws (*e.g.*, Federal Records Act), records management regulations and policies, and relevant NARA guidance?
8. Has anyone from DHS Office of Inspector General or NARA contacted you, or any of your assistants, regarding a notice of potential violation of the Federal Records Act filed by Americans for Prosperity Foundation on May 19, 2023?

Thank you for your attention to this matter. We look forward to your timely response.

Sincerely,



Roger Marshall, M.D.
United States Senator



Mike Lee
United States Senator



Mike Braun
United States Senator



JD Vance
United States Senator

The Honorable Alejandro Mayorkas
July 13, 2023

A handwritten signature in blue ink, appearing to read 'Ted Cruz', with a stylized flourish at the end.

Ted Cruz
United States Senator

A handwritten signature in black ink, appearing to read 'James Lankford', with a stylized flourish at the end.

James Lankford
United States Senator